No. 13077

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

PAUL W. SAMPSELL, Trustee in Bankruptcy of the Estate of Radiophone Corporation, Bankrupt,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

OPENING BRIEF OF APPELLANT.

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This is an appeal from an order of the District Court of the United States for the Southern District of California, Honorable William C. Mathes, Judge, affirming an order made by Referee in Bankruptcy, David B. Head, allowing the claim of the Collector of Internal Revenue in and for the Sixth Collection District of California, which claim was not filed as per section 355 of the Bankruptcy Act, within three months after the first date set for the first meeting of creditors following the entry of an Order of Adjudication made in these proceedings, which were originally filed under section 322 of Chapter XI of the Bankruptcy Act.

Jurisdictional Statement.

The original jurisdiction of the District Court was invoked by the bankrupt under sections 322 and 2-a(1) of the Bankruptcy Act by its filing a petition for an arrangement under the provisions of the said sections of the said Act [Tr. pp. 3 to 12].

The summary jurisdiction of the Referee to pass upon the allowability of the claim of the Collector of Internal Revenue for the Sixth Collection District of California filed in the within proceedings [Tr. pp. 19 to 20], was invoked under section 2-a(2) of the Bankruptcy Act, first by the trustee requesting the Referee to enter an "Order Disallowing Claim Filed After Expiration of Statutory Period" [Tr. pp. 21 to 22], and second, by the United States of America in filing its "Motion For Reconsideration of Order Disallowing Claim" [Tr. pp. 23 to 24].

The jurisdiction of the District Court on review was invoked by the trustee in filing his "Petition For Review of Referee's Order By Court" [Tr. pp. 27 to 33], under section 39-c of the Bankruptcy Act, directed toward the Referee's "Findings of Fact, Conclusions of Law and Order Thereon" [Tr. pp. 25 to 26], which order did set aside the Referee's previous "Order Disallowing Claim Filed After Expiration of Statutory Period" [Tr. pp. 21 to 22].

The jurisdiction of this, the Court of Appeals of the United States for the Ninth Circuit, was invoked by the trustee herein under section 24-a of the Bankruptcy Act, by the "Notice of Appeal" [Tr. pp. 34 to 35] filed by the

trustee herein, directed toward that "Order On Review of Referee's Order Filed May 10, 1950" [Tr. pp. 33 to 34], which order affirmed the Referee's "Findings of Fact, Conclusions of Law and Order Thereon" [Tr. pp. 25 to 27].

Statement of Case.

The bankrupt herein, on August 5, 1947, filed its original Petition for Arrangement under the provisions of section 322 of Chapter XI of the Bankruptcy Act [Tr. pp. 3 to 12]. The said Petition having been approved and referred to the Referee on August 5, 1947 [Tr. pp. 12 to 13], and a plan of arrangement not having been presented, an order of adjudication was entered by the Referee on November 8, 1947 [Tr. p. 14].

Paul W. Samsell, having been elected Trustee and having qualified by the filing of his required bond, which was approved by the Referee [Tr. pp. 14 to 17], called to the Referee's attention the fact that the claim of the Collector of Internal Revenue of the Sixth Collection District of California [Tr. pp. 19 to 20] had been filed on March 1, 1948, and beyond the three-month period after the first date set for the first meeting of creditors after the entry of an Order for Adjudication as prescribed in section 355 of the Bankruptcy Act [Tr. p. 26]. An order was then entered by the Referee on March 10, 1950, disallowing the said claim because it was filed after the said statutory period [Tr. pp. 21 to 22].

Thereafter, the United States of America, on behalf of the said claimant, on March 14, 1950, filed a motion for

reconsideration of the said order [Tr. pp. 23 to 24], and gave the trustee notice thereof [Tr. pp. 22 to 23]. After a hearing on the said motion the Referee, on May 15, 1950, entered an order setting aside his previous order disallowing the said claim and, in effect, allowing the said claim as a timely filed claim [Tr. pp. 25 to 27].

Within the time prescribed by section 39-c of the Bankruptcy Act the trustee, on May 23, 1950, filed his petition for review of the said Referee's order [Tr. pp. 27 to 33]. The hearing on the said petition for review was held before the Honorable William C. Mathes, United States District Judge, and on June 19, 1951, an order affirming the order of the Referee allowing the said claim was entered [Tr. pp. 33 to 34]. From this order the trustee timely appealed [Tr. pp. 34 to 35].

Specifications of Error.

I.

That the District Judge erred in affirming the order of Referee David B. Head, allowing the claim of the Collector of Internal Revenue as a valid, timely filed claim in the within bankrupt estate.

II.

That the District Judge erred in refusing to reverse the order of the Referee and in refusing to disallow the claim of the Collector of Internal Revenue as a claim in the within bankrupt estate, as the said claim was not filed within the statutory period provided therefor.

III.

That the District Judge erred in concluding that the 1938 Amendment of Section 57-n of the Bankruptcy Act does not prohibit the allowing of the claim of the said Collector of Internal Revenue.

IV.

That the District Judge erred in not concluding that Section 355 of the Bankruptcy Act was an Amendment of, or Supplement to Section 57-n of the Bankruptcy Act.

V.

That the District Judge erred in not utilizing the approved rules of statutory interpretation in construing Section 57-n and Section 355 of the Bankruptcy Act.

VI.

That the District Judge erred in concluding that the present problem was controlled by *New York v. Irving Trust Co.* (1933), 288 U. S. 329, which case was decided prior to the 1938 Amendment of the Bankruptcy Act.

VII.

That the District Judge erred in failing to conclude that the Collector of Internal Revenue of the United States of America is specifically designated as being subject to the provisions of Section 355 of the Bankruptcy Act.

Argument, Points and Authorities.

As the foregoing specifications of error are so closely inter-related, a separate and distinct consideration will not be given to each and every one thereof.

The problem being presented on this appeal may be most simply stated as:

> *Is the United States of Amercia, Its Officers, Agents and Bureaus, as a Claimant, Bound by the Express Provisions of Section 355 of the National Bankruptcy Act?*

It is the trustee's contention that the United States, its officers, agents and bureaus, as a claimant, is so bound. This contention is based upon the well considered reasons hereinafter set forth:

1. In arriving at a true and logical solution to the problem herein presented, due consideration must be given to the various rules of statutory interpretation.
2. The intent of Congress is that the United States, its officers, agents and bureaus, as a claimant, be bound by section 355 of the Bankruptcy Act.
3. The court's construing of section 355 of the Bankruptcy Act in the Marine Stevedoring case (*In re Marine Stevedoring Corp.* (C. C. A. 3d, 1948), 169 F. 2d 554), is unreasonable and brings about an illogical result not intended by Congress.
4. The principle of law propounded by the court in the *Irving Trust* Case (*New York v. Irving Trust Company,* 288 U. S. 329, 53 S. Ct. 389, 77 L. Ed. 815), is not applicable in a present construing of sections 57-n or 355 of the Bankruptcy Act.

5. A logical construing of the pertinent sections of the Bankruptcy Act, 355 and 57-n, unequivocally demonstrates that the United States, its officers, agents and bureaus as a claimant, is specifically bound by the said section 355.

I.

In Arriving at a True and Logical Solution to the Problem Herein Presented, Due Consideration Must Be Given to the Various Rules of Statutory Interpretation.

The problem herein, being basically one of statutory interpretation, we must apply the various rules pertaining thereto enunciated by the courts, in our construing of the various statutory provisions involved, which, we respectfully submit, will of necessity, cause this court to conclude that section 355 of the Bankruptcy Act is binding upon the United States of America, its officers, agents and bureaus.

A. The Bankruptcy Act Is Entitled to a Liberal Construction in Favor of the Bankrupt.

Maynard v. Elliott, 283 U. S. 273, 75 L. Ed. (1931) 1028, 51 S. Ct. 390;

Spier v. Sytsma (C. C. A. 8th Cir., 1932), 56 F. 2d 520.

B. The Bankruptcy Act Should Receive a Practical, Reasonable Interpretation, in Order to Promote the Object of the Law.

Dilworth v. Boothe (C. C. A., 5th Cir., 1934), 69 F. 2d 621;

In re Scott (Dist. Ct. D, Delaware, 1904), 126 Fed. 981.

C. **Absurd, Unreasonable Constructions, and Those Which Impose Mischievous Results, Should Be Avoided.**

Buckett v. Columbia Bank, 195 U. S. 345, 49 L. Ed. 231, 25 S. Ct. 38;

Peck, et al., v. Jenness, et al., 48 U. S. 612, 12 L. Ed. 841.

D. **The Legislative Intent and History of the Act May Be Considered.**

Holt v. Henley, 232 U. S. 637, 58 L. Ed. 767 (1914), 34 Sup. Ct. 459;

Southerland Statutory Construction, 3rd Ed., Vol. II, pp. 481, *et seq.*

E. **Specific Provisions Should Not Be Treated Abstractly. Every Section, Sub-section, and Provision Should Be Construed Together in Order to Ascertain the True Legislative Intent.**

West v. Lea Bros., 174 U. S. 590, 43 L. Ed. 1098 (1899), 19 S. Ct. 839.

F. **In the Construing of a Statute, Later Amendments Thereto Cannot Be Ignored.**

Summers v. Collector of Taxes (C. C. A., 8th Cir., 1937), 92 F. 2d 819.

G. **A Change in the Phraseology of a Statute Re-enacted Creates a Presumption of a Change of Intent, of the Legislative Body, From That Expressed in the Former Statute.**

Crawford v. Burke, 195 U. S. 176, 49 L. Ed. 147, 25 S. Ct. 9.

The statutory provisions to which the rules hereinabove set forth are to be applied, are the following sections of the Bankruptcy Act:

"57-n. Except as otherwise provided in this Act, all claims provable under this Act, including all claims of the United States and of any State or subdivision thereof, shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed: Provided, however, That the court may, upon application before the expiration of such period and for cause shown, grant a reasonable fixed extension of time for the filing of claims by the United States or any State or subdivision thereof. * * *."

"Sec. 355. Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only such claims as are provable under section 63 of this Act shall be allowed and, except as provided in section 354 of this Act, claims not already filed may be filed within three months after the first date set for the first meeting of creditors, held pursuant to section 55 of this Act, or, if such date has previously been set, then within three months after the mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with."

II.

The Intent of Congress Is That the United States, Its Officers, Agents and Bureaus, as a Claimant, Be Bound by Section 355 of the Bankruptcy Act.

Before a proper construction can be placed upon the various sections of the Bankruptcy Act herein involved, due regard must be had for the intent of the Legislature, including the problems to be remedied by the legislation, together with the Legislature's solution thereof.

That Congress did not intend the United States to be placed in a preferred category with respect to filing its claims following the entry of an order of adjudication in a pending Chapter XI proceeding, as it did specifically place the United States in a privileged category in section 57-n by providing that the United States, for cause shown, might petition for an extension of time in which to file its claim, and in section 64-a(4), which granted to the United States a fourth order of priority as to payment ahead of general unsecured creditors, may be concluded from an evaluation of various reports submitted by the committees in Congress that drafted the present Bankruptcy Act, enacted June 22, 1938, which substantially changed the then existing Act.

In considering these reports we must bear in mind that prior to 1938 there was no provision in section 57-n including the United States, or any of its States therein. Nor was the present Chapter XI in existence. Rather, the skeleton provisions of Chapter XI were contained in the old sections 12, "Compositions, When Confirmed," and 74, "Compositions and Extensions," wherein no specific provision was made as to the filing of claims in the preceedings in the event that an order of adjudication was entered, and bankruptcy directed to be proceeded with.

The first of these reports is cited in Collier on Bankruptcy, 14 Ed., Vol. 8, p. 1013, N. 43, Analysis of H. R. 12889, 74th Cong. 2d Sess. (1936) 180, wherein the committee reported:

> "In an early draft of the Chandler Act, present Chapters X, XI, XII, and XIII were contained in Section 12. In an analysis of that draft, the following comment was made with respect to the six months' period of Section 57-n and the three months' period of the provisions now contained in Section 355: 'It should be observed that the time limit of six months is retained. However, under our Section 12 this period is reduced to three months. Since the period is now to run from the date of the first meeting, it is our thought that in the interest of expedition, a three months' limitation might apply as well to a proceedings in bankruptcy; but we are deferring to a majority opinion, which prefers the longer period in the ordinary bankruptcy case. *In the case, however, of a proceeding initiated under our Section 12, where creditors have already had notice of the pending proceedings, it would seem that a shorter period is adequate.*'" (Emphasis ours.)

In 1937 the House of Representatives submitted its final report, H. R. 1409, 75th Cong., 1st Sess., wherein it set forth, at page 3, as two of the purposes of the Bill then under consideration:

> "* * * 2—To increase efficiency in administration * * *. 10—To prescribe an improved composition procedure, including certain of the relief provisions of the Act for individual compositions and extensions, and a carefully prepared plan of corporate reorganizations, retaining the desirable permanent provisions of the new legislation and eliminating cumbersome, overlapping, and inconsistent provisions * * *."

Thereafter, at page 13 of the aforesaid report, under the general heading "Amendments to Increase Efficiency in Administration" the committee gave specific consideration to the provisions regulating the time in which claims must be filed:

> "(3) CLAIMS—FILING—Section 57: Subdivision n relating to the filing of claims has been entirely recast. and several significant changes have been made.
>
> *All proofs of claim, except as otherwise provided in Chapters X, XI, XII and XIII, including claims for taxes and debts owing to a government, must be filed and proved.* (Emphasis ours.) The provision in respect to government claims is added in order to overcome the decisions which hold that the bar time for the filing of claims is not binding upon the sovereign. Thus, the administration of the estate is speeded up, and the distribution becomes more certain and definite. * * *
>
> The time for filing claims is made to relate to the date of the first meeting of creditors, instead of the date of adjudication. Creditors do not customarily receive notice of the proceedings until the first meeting is fixed. In many cases schedules are not filed for several months, thereby delaying the first meeting of creditors. Therefore, it is proper for the protection of creditors that the time for filing claims shall run from the date of the first meeting.
>
> *The provisions in Chapters X, XI, XII, and XIII with reference to the filing of claims should be considered in this connection."* (Emphasis ours.)

The Senate Committee, in 1938, made its report, Sen. Reports 1916, 75th Cong., 3d Sess., Calendar No. 2022, and did therein, at page 2, under the general heading "Necessity for Amendment of Act," make the following statement:

"* * * The provisions dealing with claims of Federal and State Governments, particularly with respect to the proving and filing of such claims and the dischargeability of tax claims, require modernization.

Numerous procedural provisions, particularly those relating to time periods, need alteration in order to expedite the proceedings. * * *

The present law fails to deal adequately with compensation of referees, receivers, and trustees, the filing and proving of claims * * *."

Thereafter, at page 5 of the said report, the committee considers the new provisions relative to the filing of claims:

"5. Including Government Claims Within the Bar Time—Extension of Time—(Sec. 57, subdivision n, p. 76, lines 7 and 10-13).

The House bill includes within the bar time for the proving of claims, all claims of the United States and of any State or subdivision thereof. The committee has both strengthened and extended this proposed amendment by providing first, that such claims must actually be filed within the bar time, and second, by permitting additional time for the filing of such claims upon application for cause shown. *The committee agrees with the proposal that government claims should be subjected to the same requirements as other claims* (Emphasis ours), but is of the opinion that the limitation should be tempered by the provision for extension, for the reason that it is sometimes difficult for the Government to prepare and present its claim within a fixed time. The limitation will speed up the closing of estates, and the extension will provide a reasonable flexibility."

Having carefully analyzed these various reports and bearing in mind the reasons heretofore enumerated for the

amendment to section 57-n, so as to include the United States and the various States within its time provision, and further, considering that the entire of Chapter XI was added to the Act simultaneously therewith, it would seem logical to conclude that the Congress actually intended the United States to be bound by the time limit prescribed in section 355 of the Bankruptcy Act.

In Collier on Bankruptcy, 14th Ed. (1940), Vol. 8, P. 1017, it is stated:

> "Congress definitely intended that the three month period of section 355 entirely replace the six months' period of section 57-n; there is no indication of an intent to preserve the six month period of section 57-n for any purpose."

A realization, that Congress intended that the United States be considered on an equal basis with other creditors in bankruptcy proceedings unless expressly excepted, was had by the Supreme Court of the United States in the case of *City of New York v. Saper,* 336 U. S. 328, 93 L. Ed. 710, 69 S. Ct. 554. Therein the court determined that unsecured tax claims of the United States would bear interest only to the date of bankruptcy, not to the date of payment. The court also decided this issue even though the United States is not specifically mentioned in section 63-a (1) and (5) of the Act, which limits interest collectible to the date of bankruptcy. It was pointed out that there was no provision in the Bankruptcy Act expressly repudiating this principle or allowing an exception in favor of tax claims. The court in the *Saper* case concluded by stating:

> "Tax claims are treated the same as other debts, except for the fourth priority of payment."

III.

The Court's Construing of Section 355 of the Bankruptcy Act in the Marine Stevedoring Case [In re Marine Stevedoring Corp. (C. C. A. 3d, 1948), 169 F. 2d 554], Is Unreasonable and Brings About an Illogical Result Not Intended by Congress.

Two reported cases have been decided which have attempted to answer the problem herein presented. However, in neither of the said cases does it appear that the court actually construed and interpreted the statutory provisions actually involved.

The first of these cases is *In re Dorb the Chemist Pharmacies, Inc.* (S. D. N. Y., 1939), 43 Am. B. R. (N. S.) 688, 29 Fed. Supp. 832, wherein District Judge Goddard decided that section 355 of the Act did not bind the United States because section 378(2) of the said Act indicated an intent to the contrary on the part of Congress, by providing therein that after the entry of an Order of Adjudication in a pending Chapter XI proceeding, "the proceeding shall be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered on the day when the petition under this chapter was filed."

The court need not have strayed so far from the section involved to find such a statement as that in section 378(2), as in section 355 itself, it provides for the allowance of only those claims provable under section 63 of the Act and for a first meeting of creditors as provided in section 55 in the said Act. Further, section 302 of the Act, which

deals with the construction of the provisions in Chapter XI, provides:

> "The provisions of Chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent with or in conflict with the provisions of this Chapter, apply in proceedings under this Chapter."

However, it is to be noted, that the court makes no attempt to harmoniously construe the two pertinent sections herein involved, namely, 57-n and 355. As these two sections are the only ones pertaining to the filing of claims in the factual situation presented, it would appear mandatory that such a construing be considered.

Further, the decision in the *Dorb* case is pure dictum, as an analysis of the pertinent facts will demonstrate. The original petition under Chapter XI was filed on January 4, 1939. Thereafter, on the 26th of January, 1939, an order was entered adjudicating the debtor a bankrupt and directing liquidation. On January 27, 1939, the claimant, City of New York, received a notice stating that all claims must be filed within three months after the date of the said notice, to wit, January 27, 1939, and that the first meeting of creditors would be held on February 6, 1939. On May 3, 1939, the Referee denied an application made by the claimant to file its claim on the ground that the date in which to file claims had expired on the 27th of April, 1939, which was, in effect, three months after the date previously set for the filing of claims. However, it is to be noted that the three-month period after the first date

set for the first meeting of creditors did not expire until the 6th day of May, 1939, three days after the order of the Referee denying the city's application to file a claim, which order was later reversed by Judge Goddard.

As the *Dorb* case deals with an original Chapter XI proceeding filed under the provisions of section 322 of the Bankruptcy Act, there could not have been any other first date set for the first meeting of creditors held pursuant to section 55 of this Act, other than that set by the court in its notice of January 27, 1939, namely, February 6, 1939. The three-month period under section 355 in which to file claims based upon this date, had not expired when the Referee made his order disallowing the said claim.

The second case considering our problem is *In re Marine Stevedoring Corp.* (C. C. A. 3d, 1948), 169 F. 2d 554. Judge Biges, in speaking for the court, bases its opinion entirely on the *Dorb* case in its holding that the United States is not bound by section 355 of the Bankruptcy Act.

Here, again, the facts did not warrant the court even considering the time limit of section 355 or, for that matter, of section 57-n, as this too, was an original Chapter XI proceeding filed under the provisions of section 322 of the Bankruptcy Act, in which no date was ever fixed for a first meeting of creditors. The original proceedings being filed on the 26th of October, 1943, and no arrangement having been effected, on the 17th of May, 1944, the Referee caused a notice to be mailed to the creditors to the effect that on the 12th of May, 1944, an order had been entered adjudging the debtor a bankrupt and directing that all

claims be filed within three months of the date of the said order.

As no first meeting of creditors had been previously set, and since it is mandatory under the provisions of section 355 of the Bankruptcy Act that such a meeting be set, and, that the period within which claims are to be filed is to be based upon that date by virtue of the express provisions of section 355 (*Matter of Credit Service, Inc.* (D. Md., 1941), 49 Am. B. R. (N. S.), 796, 38 Fed. Supp. 761), there was no apparent need for this decision, nor for that in the *Dorb* case. The United States, an individual State, a prior labor claimant or even a general unsecured creditor might have still filed a claim, as it was impossible, under the circumstances, for any period relative to the filing of claims to have commenced, let alone to have expired.

However, apart from the reasoning of the court in the aforesaid cases, and apart from the question as to whether or not the decisions were necessary, let us now extend these decisions to their logical conclusions.

Certainly, Congress could not have intended the strange results that appear in the factual situation propounded in Collier on Bankruptcy, 14th Ed., Vol. 8, page 1018:

> "If a section 321 petition is filed in a pending bankruptcy proceeding five months after the first date set for the first meeting of creditors, and two months later an order is entered under Chapter XI directing that bankruptcy be proceeded with, creditors in general thereafter have the three months' period prescribed by section 355 within which to file their

claims, if not already filed. But if section 57-n determines the time within which the claims of the United States or any state or subdivision thereof may be filed, then the claims of the United States or any state or subdivision thereof which have not already been filed are entirely barred from being filed, since more than six months have expired since the first date set for the first meeting of creditors, unless it be held in that situation that the government may take advantage of the provisions of section 355. Clearly, Congress did not intend a rule that in some cases would treat the United States and the states and subdivisions thereof less favorably than ordinary creditors are treated. It is thus apparent that the six months' period prescribed by section 57-n is not applicable, and that the three months' period prescribed by section 355 does not act as a bar because it fails specifically to include the United States or any state or subdivision thereof. Since there is no fixed time limiting those claims, the proviso of section 57-n dealing with an extension of time can have no application, although that proviso would be applicable if either the six months' period of section 57-n or the three months' period of section 355 applied. Claims may be filed by the United States or any state or subdivision thereof after the expiration of the three months' period prescribed by section 355, without the necessity for an order of extension. That is subject, however, to the power of the court to issue a bar order requiring the United States or any state or subdivision thereof to file its claim within a certain period or be barred from participating in

> the estate. *Unless and until it be judicially determined that either section 355 or section 57-n does apply to claims of the United States or any state or subdivision thereof, it is the safer practice for a trustee to apply for the entry of such a bar order.*" (Emphasis ours.)

Such a conclusion obviously discriminatory against the United States, would seem to be just as unwarranted as a complete exclusion of all tax claims in a situation covered by Section 355, merely because tax claims are not enumerated in Section 63 of the Bankruptcy Act. Such a conclusion would result from an isolated consideration of the opening phrase of Section 355 which states:

> "Upon the entry of an order under the provisions of this Chapter directing that bankruptcy be proceeded with, only such claims as are provable under Section 63 of this Act are to be allowed. * * *"

Clearly, conclusions such as these, which logically follow the decision in *In re Marine Stevedoring Corp.* lead to unreasonable, illogical, and mischievous results which, of necessity, place the United States, its officers, agents and bureaus in a position less favorable than that of other creditors, a situation obviously not intended by the Congress of the United States. Certainly, such constructions and interpretations should be ignored if a reasonable construction and interpretation is possible.

IV.

The Principle of Law Propounded by the Court in the Irving Trust Company Case (New York v. Irving Trust Company, 288 U. S. 329, 53 S. Ct. 389, 77 L. Ed. 815) Is Not Now Applicable in a Present Construing of Section 57-n or Section 355 of the Bankruptcy Act.

It is granted that if a statutory provision tends to injuriously encroach upon affairs of the government it will receive a strict interpretation in favor of the public, and in the absence of an express provision or a necessary implication, the sovereign remains unaffected. (*United States v. Herron,* 87 U. S. 251, 22 L. Ed. 275.) This is the rule adhered to by the court in *New York v. Irving Trust Company,* 288 U. S. 329, 53 S. Ct. 389, 77 L. Ed. 815, wherein it was provided that since the United States was not specifically mentioned in the old Section 57-n of the Act that it was not bound by its provisions.

However, this rule, too, is subject to modification, as where the government is expressly included, there then being no room for application of the rule (*Inhabitants of Whiting v. Inhabitants of Lubec,* 121 Me. 121, 115 Atl. 896), or, where such a modification is necessary to enable the statute to receive a sensible and reasonable treatment. Such a modification of the rule is required where the demands of a contrary public policy include the government within the purpose and intendment of the statute. This may be reflected where the objective of the statute could not be accomplished, without including the govern-

ment within its provisions. (*Fink v. O'Neil,* 106 U. S. 272, 27 L. Ed. 196, 1 S. Ct. 325; *Guarantee Co. v. Title Guaranty Co.,* 224 U. S. 152, 56 L. Ed. 706, 32 S. Ct. 457.)

Such a modification of this rule is required in the problem herein presented, as the intent of Congress is to expedite and increase efficiency in the administration of bankrupt estates and to this end did specifically include the United States within the provision of Section 57-n and did simultaneously therewith enact the entirety of Chapter XI of the Bankruptcy Act, together with Section 355 therein, with the intent, as hereinbefore enunciated in the various committee reports, that the provisions of Chapter XI, with reference to the filing of claims, be considered under the legislative intent that occasioned the amendment of Section 57-n.

This very court adhered to a like principle in *In re Knox-Powell-Stockton Co.* (1939), 100 F. 2d 997, wherein it determined that the United States was bound by the provisions of the old Section 67-d of the Bankruptcy Act, though not specifically mentioned therein, and as a result, that a State tax lien claim was to be paid ahead of an unsecured income tax claim of the United States, and the court did therein state, at page 982:

> "* * * And section 67-d applied against the United States as against any other creditor, since the Act was passed with the United States in the mind of Congress."

V.

A Logical Construing of the Pertinent Sections of the Bankruptcy Act, 355 and 57-n, Unequivocally Demonstrates That the United States, Its Officers, Agents and Bureaus as a Claimant Is Specifically Bound by the Said Section 355.

It is respectfully submitted that in attempting to arrive at a logical solution of the problem herein presented, bearing in mind various rules of statutory interpretation hereinbefore considered, we must now construe the various sections and sub-sections of the Bankruptcy Act pertinent to our problem, with particular emphasis being placed upon Section 57-n and 355 thereof.

Section 57-n provides:

> "Except as otherwise provided in this Act, all claims provable under this Act, including all claims of the United States and of any State or subdivision thereof, shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed."

This section then, by its very terms, "Except as otherwise provided in this Act, *all claims* provable under this Act" (Emphasis ours), specifically proclaims that its provisions are the general rule and must be so considered by all, even by the United States, its officers, agents and bureaus, unless there are specific exceptions made thereto. No attempt is made to indicate an intent on the part of Congress that the provisions of this section are applicable

merely to ordinary bankruptcy proceedings, to the exclusion of "chapter" proceedings, Chapters X, XI, XII and XIII being a part of the Bankruptcy Act. It specifically includes "all claims provable under this Act," not all claims provable in proceedings covered by Chapters I to VII of this Act.

The other section of primary importance relative to the filing of claims, enacted simultaneously with the amendment to Section 57-n, is Section 355, which provides:

> "Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only such claims as are provable under section 63 of this Act shall be allowed and, except as provided in section 354 of this Act, claims not already filed may be filed within three months after the first date set for the first meeting of creditors, held pursuant to section 55 of this Act, or, if such date has previously been set, then within three months after the mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with."

By the very provisions of this latter section, we see that Congress in no way intended that this section be isolated from the various other sections and sub-sections of the Act as reference therein is made to Section 63 which enumerates debts which may be proved, and Section 55 which relates to meetings of creditors.

In construing these two important sections, we should consider the case of *Broughton v. Humble Oil Co.,* 105

S. W. 2d 480, wherein the court determined that the existence of an exception in the statute clarified the intent that the statute should apply in all cases not excepted. In applying this thought to our construing the sections under surveillance it would seem that a reasonable reading together of the two sections would be that EXCEPT IN THE SITUATION COVERED BY SECTION 355 WHEREIN A THREE-MONTH PERIOD WILL PREVAIL, ALL CLAIMS PROVABLE UNDER THIS ACT, INCLUDNG THOSE OF THE UNTED STATES AND ANY STATE OR SUBDIVISION THEREOF, SHALL BE PROVED AND FILED IN THE MANNER PROVIDED IN THIS SECTION, TO-WIT, CLAIMS NOT FILED WITHIN SIX MONTHS AFTER THE FIRST DATE SET FOR THE FIRST MEETING OF CREDITORS SHALL NOT BE ALLOWED.

In so construing these two sections, it can be readily seen that the United States is specifically mentioned and must, of necessity, be bound by the three-month period prescribed by Section 355 of the Act.

Nowhere in Section 355 does Congress alter its general mandatory provisions found in Section 57-n binding the United States as well as other persons. Nor, is there any attempt by Congress in Section 355, to place the United States in a privileged category or in a category less advantageous than that occupied by other creditors. In short, Section 355 merely shortens the six-month period generally provided for by Section 57-n, to a period of three months.

Conclusion.

It is respectfully submitted that a harmonious construction and interpretation, such as we have heretofore suggested, gives a sensible and reasonable treatment to the pertinent sections of the Act herein involved, and provides for the solving of the problem in existence when the said sections were amended and enacted, by giving full effect to the obvious and proclaimed intent of Congress.

We respectfully submit that the decision of the District Court be reversed and that the claim of the Collector of Internal Revenue in and for the Sixth Collection District of California be disallowed.

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